

E-Commerce and Insurance: Coverage Issues Arising From the Internet

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How the Internet Changes Risk - New Risks

- New risks
- Old risks in new guises (with higher incidence or more severe consequences)

How the Internet Changes Risk - Insurance Coverage

- Coverage gaps.
- Risk factors have changed.
- Companies need to assess Internet risk and manage it.

Commercial Use of the Internet

- Web site as vehicle for advertising the owner's goods/services.
- Web site as distribution channel.
- Web site as a media vehicle with paid advertising.
- Web site as vehicle for providing advice.

A Bad Day in the Life of an MIS Department - Morning

- Virus downloaded from e-mail infects PC hard drives and company server.

A Bad Day in the Life of an MIS Department - Noon

- Infringement claim from posting copyright protected material on web page.

A Bad Day in the Life of an MIS Department - Afternoon

- Lawsuit filed charging a senior engineer libeled a competitor's products in a chatroom.

A Bad Day in the Life of an MIS Department - Morning

- The Virus - First Party Coverage Issues
 - ◆ “Physical loss of or damage”?
 - ◆ American Guarantee & Liability Insurance Co. v. Ingram Micro, Inc.
2000 U.S. Dist. Lexis 7299 (D. Ariz..)

A Bad Day in the Life of an MIS Department - Morning

- The Virus - First Party Coverage Issues
 - ◆ Covered cause of loss?
 - ◆ Limited coverage for business records?
 - ◆ Business interruption coverage?

A Bad Day in the Life of an MIS Department - Morning

- The Virus - Third Party Coverage Issues
 - ◆ Physical injury to tangible property.
 - ◆ “Your work” exclusion.
 - ◆ Intentional acts exclusion.

A Bad Day in the Life of an MIS Department - Noon

- Coverage Issues -- Copyright Infringement
 - ◆ Advertising injury includes coverage for copyright infringement
 - ◆ Does not cover acts committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

A Bad Day in the Life of an MIS Department - Afternoon

■ Trade Libel

- ◆ Covered by the advertising injury provision if in “your advertisement.”

A Really Bad Day in the Life of a dotcom Company

- dotcom companies are vulnerable to a wider range of Internet-related problems.
- dotcom companies can generate a wider range of potential insurance claims.

A Really Bad Day in the Life of a dotcom Company

- An unhappy customer in Great Britain asserts that individual advice provided over the Internet aggravated an injury resulting in the need for surgery.

A Really Bad Day in the Life of a dotcom Company

- A class action lawsuit seeking an injunction and damages is filed alleging that the company sold the individual information, including medical histories, to other companies.

A Really Bad Day in the Life of a dotcom Company

- The ISP goes down, access to the web site is unavailable for 24 hours during the Christmas shopping season.

Bad Advice in Great Britain

- Where does an incident on the Internet occur?
 - ◆ Geographic scope of the CGL policy.
 - ◆ 44% of traffic at U.S. websites comes from abroad.

Invasion of Privacy

- The Internet facilitates gathering detailed consumer information.
- Consumer data is a major asset of dotcom companies.

Invasion of Privacy

- Aggregated data.
- Individual data sold without permission.
- Improperly handled credit information

Web Site Failure at a dotcom Company

- The web site may be the sole distribution channel.
- Web site failures are more likely to lead to claims (against the owner of the web site and/or the ISP or other parties responsible for the failure.)

Web Site Failure at a dotcom Company

- Director & Officer Liability
 - ◆ Coverage of Defense Costs

Internet Risk Profile

- Scope of Internet Activities
- Quality of Risk Identification.
- Ability to Respond to Problem.

Dealing with Internet Risks

- Companies need to assess their Internet risks.
- Companies need to develop risk mitigation systems.
- There are new insurance products focused on Internet risks.